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In re Application of
Lepine
Application No.: 10/526,666
PCT No.: PCT/FR2003/002653
Int. Filing Date: 05 September 2003
Priority Date: 05 September 2002
Attorney Docket No.: 21424-00012-US1
For: Wristwatch

DECISION

This is with regard to the petition filed on 04 November 2008, which seeks relief under 37 CFR 1.181 or, alternatively, 37 CFR 1.137(b).

BACKGROUND

This international application was filed on 05 September 2003, designated the United States, and claimed an earliest priority date of 05 September 2002. Accordingly, the 30 month time period for paying the basic national fee in the United States expired at midnight on 05 March 2005. This international application became abandoned with respect to the national stage in the United States for failure to timely pay the basic national fee, as of midnight on 05 March 2005.

On 20 July 2005, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed, reflecting the abandonment of the application with respect to the U.S.

On 25 August 2005, another Notification of Abandonment (Form PCT/DO/EO/909) was mailed, reflecting the abandonment of the application with respect to the U.S.

DISCUSSION

Petition Under 37 CFR 1.181

Petitioner requests withdrawal of the holding of abandonment, on the basis that the Notifications of Abandonment were mailed to the address associated with Customer No. 20678, rather than 30678. Inspection of the Transmittal Letter and ADS filed on 04 March 2005 reveal that both identify Customer No. 30678 as the correspondence address; accordingly, the Notifications mailed on 20 July 2005 and 25 August 2005 were sent to the wrong address. As such, they were defective, and they are hereby VACATED. However, counsel is respectfully advised that this international application became abandoned with respect to the national stage in the United States under 35 U.S.C. 371(d) as of midnight on 05 March 2005, one day after the filing of correspondence on 04 March 2005 (and prior to the mailing of the Notifications of Missing Requirements). Thus, the erroneous entry of the correspondence address into the records of the USPTO, and the erroneous mailings of the Notifications of Abandonment noted above, did not affect the fact of abandonment (that is, the application would have been regarded

as abandoned regardless of the correspondence address). As such, it would not be appropriate to withdraw the holding of abandonment on the basis of the present record.

Petition Under 37 CFR 1.137(b)

Petitioner requests alternative relief under 37 CFR 1.137(b).

Petitioner states that "the entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional." Said statement is being accepted in satisfaction of 37 CFR 1.137(b)(3).

Applicant has filed the required reply in the form of the basic national fee. The fee authorization included in the petition is interpreted to grant authority to charge the petition fee. Therefore, the request to revive the application abandoned under 35 U.S.C. 371(d) is granted as to the national stage in the United States of America.

Counsel's Deposit Account No. 22-0185 is being charged in the amounts of \$810.00 (fee code 2453), \$65.00 (fee code 2617) and \$130.00 (fee code 1618) for the petition fee, surcharge under 37 CFR 1.492(h) and processing fee under 37 CFR 1.492(i), respectively.

DECISION

The petition under 37 CFR 1.181 is DISMISSED, without prejudice.

The petition under 37 CFR 1.137(b) is GRANTED.

This application is being forwarded to the Office of Patent Application Processing for further processing, including the correction of the correspondence address to the address associated with Customer No. 30678. The date of the application under 35 U.S.C. 371(c)(1), (2) and (4) is 04 November 2008.

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